

**Leprino Foods**2401 MacArthur Road
Tracy, California 95376
209.835-8340

January 20, 2006

Via Facsimile & U.S. Mail

Mr. Jim Marshall
Water Resources Control Engineer
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Informational Draft Order (NPDES Permit # CA0079154) and Accompanying
Attachments Issued to the City of Tracy ("Draft Permit")/Leprino Foods
Company's ("Leprino") Comments

Dear Mr. Marshall:

Thank you again for taking the time to meet with us last November. We were pleased to learn that Leprino is no longer named as a "Discharger" in the City of Tracy's Draft Permit, which was recently reissued. We have received the reissued Draft Permit and, although Leprino is no longer a named discharger in the Draft Permit, we have a few comments on the Draft Permit that we would like you and your staff to consider before the permit is issued for public comment. These comments primarily relate to various references to Leprino and its pretreatment facilities in the Draft Permit and accompanying attachments.

Leprino Comment #1: Leprino Disputes That Groundwater Degradation Has Occurred.

The Draft Permit and accompanying attachments contain statements that groundwater degradation has occurred as a result of the storage and further treatment of partially treated wastewater in unlined ponds. Leprino disputes this conclusion and believes that this conclusion is not supported by the facts, including the groundwater monitoring data and report prepared by CH2MHILL on behalf of the City. With respect to the Draft Permit, Leprino's objection is that the language used throughout the Draft Permit is represented as factual in nature. We recognize that the Board disagrees with the conclusions in the CH2MHILL report, but we think it would be more appropriate for the Board to characterize this issue as an opinion, as opposed to an objective factual finding. For example, rather than stating that "groundwater monitoring data shows the groundwater underlying the unlined treatment ponds has been degraded," we suggest a statement along the lines of the following: "based on its review of the groundwater monitoring data, the Board believes that groundwater may have been degraded."

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In addition, on page F-17 of the Fact Sheet the Board has added a statement that "[t]he wastewater causing the degradation is predominantly industrial wastewater from Leprino." There does not appear to be any basis for this conclusion. First, we disagree that there has been any degradation. Second, there has been no determination of the cause of any alleged degradation. Third, there has been no determination (or investigation for that matter) as to the party responsible for any alleged degradation. If it was determined that degradation had occurred, there would remain the question of the source. Leprino operates one of five ponds. Heinz Foods utilized these ponds for years prior to their shutdown in Tracy. The other four ponds contain waters from other sources other than Leprino. There is no reason or basis to include this statement in the Fact Sheet and, under the circumstances, it is inappropriate to include this statement in the Fact Sheet of the City of Tracy's permit.

Aside from disagreeing with the conclusions, Leprino's primary concern is that statements in the permit could be used against Leprino in the future and to the extent an opinion is presented as fact in the permit, it will be more difficult for Leprino to disprove the alleged factual finding. This could be especially troublesome in the context of a private, third party action that attempts to use the permit language as conclusive evidence of degradation and cause, rather than a review of the underlying data and reports.

Leprino Comment #2: Leprino Disputes The Conclusion That Leprino's Effluent in Its Unlined Pond Constitutes "Designated Waste" Under State Law.

The Draft Permit and accompanying attachments refer to Leprino's pretreated effluent as "Designated Waste" pursuant to Title 27. Leprino disagrees with this conclusion primarily on the grounds that (i) previous studies have shown that Leprino's pretreatments ponds are not adversely affecting underlying groundwater; (ii) Leprino's pretreated effluent that is resident in its unlined pond does not exhibit the characteristics required under Title 27 for such designation; and (iii) the pretreated effluent in this pond can not reasonably be expected to affect beneficial uses of the waters of the state.

Leprino Comment #3: Leprino Requests Clarification With Respect to Condition #6 in the Time Schedule Order.

Condition #6 in the Time Schedule Order (page 8) provides that "[a]ny increase in the mass loading of salt discharged to the treatment ponds is prohibited." Leprino would like to better understand this prohibition. For example:

- What does "mass loading" mean and how is it measured?
- What is the definition of "salt" and what compounds are included?
- What is the applicable timeframe for determining whether there has been a increase in the mass loading of salt?

In addition, condition #6 also requires a corrective action plan to remediate existing groundwater impacts. This requirement is premature considering that the only studies that have been conducted have concluded there has been no groundwater degradation. While additional testing and study may be warranted, there does not appear to be any

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justification for remediation at this time. Further, even if there has been groundwater degradation, there has been no definitive determination with respect to the cause of the degradation and responsibility for such alleged degradation. In addition, the language in the Time Schedule Order is unclear. For example:

- What groundwater impacts need to be remediated?
- What is the goal of the remediation program?

Leprino suggests that additional study is necessary before it is appropriate to require a corrective action plan. At a minimum, if the requirements in the Draft Permit will have any impact on Leprino's operations (including its use of the one unlined pond), Leprino requests that it have the ability to perform a study of the potential groundwater impacts associated with its pond and an opportunity to review the results of such investigation with the Board before Leprino is required to take any action.

Thank you again for considering Leprino's comments. If you have any questions with respect to Leprino's initial comments, please let me know.

Very Truly Yours,



Joel Krein

Vice President- Western Region Production